

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

April 28, 2004

DIVISION ONE

B167347 Los Angeles County, D.C.S. (Not for Publication)
 v.
 Connie A. et al.
 In re Melissa Carmen T., a minor

The order is affirmed. The case is remanded for compliance with the
ICWA.

Spencer, P.J.

We concur: Ortega, J.
 Vogel (Miriam A.), J.

B166423 People (Not for Publication)
 v.
 Elvin Cabrera

The judgment is affirmed.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.
 Mallano, J.

April 28, 2004 (Continued)

DIVISION ONE (Continued)

B166497 People (Not for Publication)
v.
Norman Manuel Serrano

The direct victim restitution order in the amount of \$13, 900 is reversed. In all other respects, the judgment is affirmed. The case is remanded for a hearing to determine the amount of restitution to be awarded the victim's family.

Spencer, P.J.

We concur: Ortega, J.
Vogel (Miriam A.), J.

B168252 People (Not for Publication)
v.
Robert David Chambers

The judgment is affirmed.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.
Mallano, J.

B169085 People (Not for Publication)
v.
Ramirez

The judgment is affirmed.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
Mallano, J.

April 28, 2004 (Continued)

DIVISION ONE (Continued)

B164308 People (Not for Publication)
v.
Pickens

The sentence is vacated and the matter is remanded for a new trial on the battery prior conviction and a new sentencing hearing. In all other respects, the judgment is affirmed.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
Mallano, J.

B165146 Orphali (Not for Publication)
v.
Department of Health Services, State of California

The judgment is reversed as to the timeliness of the adoption of the Department's final decision. Orphali is entitled to a 10 percent reduction of the overpayment determine by the Department to be due (Welf. & Inst. Code, 14171.subd.(d)). The matter is remanded to the trial court with directions to vacate the January 14, 2003, judgment and to enter a new judgment granting in part Orphali's petition to that effect. The court shall forward a copy of that order to the Director of the Department. In all other respects, the judgment is affirmed. The parties are to bear their own costs.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
Mallano, J.

April 28, 2004 (Continued)

DIVISION ONE (Continued)

B167418 People (Not for Publication)
v.
Dailey

The judgment is affirmed.

Ortega, J.

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

B168646 Frey (Not for Publication)
v.
City of Santa Monica

The order is affirmed. The City is awarded its costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Mallano, J.

B165194 Fleming (Not for Publication)
v.
City of Los Angeles, et al.,

The judgment is reversed and the cause is remanded to the trial court with directions to place the case back on track for trial. Fleming is awarded his costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Ortega, J.

April 28, 2004 (Continued)

DIVISION ONE (Continued)

B164142 Norma T. (Not for Publication)
v.
Alfred S.

The judgment is affirmed.

Mallano, J.

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

B172327 Villarreal, et al. (Not for Publication)
v.
Superior Court, Los Angeles County
(Greyhound Lines, Inc. et al. r.p.i.)

The petition is granted, and a peremptory writ of mandate shall issue compelling the trial court (1) to vacate its orders of November 4 and December 3, 2003, and (2) enter a new order denying Greyhound's motion to apply Arizona law to the issue of the defendants' joint and several liability. Villarreal is awarded her costs of these writ proceedings.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Mallano, J.

DIVISION TWO

B162820 Pheffer et al.
v.
Orr

Filed order denying petition for rehearing.

April 28, 2004 (Continued)

DIVISION THREE

B165435 People
 v.
 Parks, Sr.

Filed order modifying opinion. (No change in the judgment)

B163735 Sampson
 v.
 Parking Service 2000 Com, Inc.,

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

B163287 People
 v.
 Alex Anthony Villanueva

Filed order granting petition for rehearing. The submission date of March 9, 2004, is vacated and the matter is resubmitted as of this date. Additional briefing or oral argument will not be needed.

DIVISION FIVE

B165702 Marcus Jones (Not for Publication)
 v.
 Lancaster Newporter Fuller Properties

The judgment is reversed. Appellant(s) to recover costs.

Armstrong, J.

We concur: Turner, P.J.
 Mosk, J.

April 28, 2004 (Continued)

DIVISION FIVE (Continued)

B167032 Dial 800, et al. (Certified for Publication)
v.
Fesbinder, et al.

The judgment is reversed. Upon issuance of the remittitur, the trial court is to allow defendants to address the merits of the interpleader complaint. If the trial court grants plaintiffs' discharge motion, it is to calculate their attorney fees and costs and deduct them from the interpleaded funds. All other parties are to bear their own costs incurred on appeal. The trial court is to exercise its discretion as to whether to stay the remainder of the action as discussed in the body of this opinion.

Turner, P.J.

We concur: Grignon, J.
Mosk, J.

DIVISION SIX

B166595 Gherini (Not for Publication)
v.
Carlton, et al.

The judgment is affirmed. Plaintiff shall bear costs on appeal.

Gilbert, P.J.

We concur: Yegan, J.
Coffee, J.

B168108 Ventura County Department of Child Support Services
v.
Jeffrey C. Brown as Trustee, et al.

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment).

DIVISION SIX (Continued)

B167559 People (Not for Publication)
v.
Conley

The judgment of conviction is affirmed. We reverse the portion of the judgment relating to Conley's admission of his prior conviction. The matter is remanded for determination of the truth of the prior conviction allegation and for re-sentencing. After re-sentencing, the trial court is directed to prepare a modified abstract of judgment and forward it to the Department of Corrections. We also modify the judgment to indicate that the five-year enhancement imposed by the trial court constitutes an enhancement under section 667, subdivision (a) rather than section 667.5, subdivision (b). The trial court is directed to amend the abstract of judgment accordingly and to forward a copy to the Department of Corrections.

Perren, J.

We concur: Yegan, Acting P.J.
Coffee, J.

B165759 People (Not for Publication)
v.
Jelks

The judgment is modified to strike the section 12022.7 enhancement from the mayhem sentence, to strike the section 12022, subdivision (b) enhancement from the assault with a deadly weapon sentence, and to impose and stay a parole revocation fine of \$5,000. The trial court is directed to amend the abstract of judgment accordingly and to forward a copy to the Department of Corrections. As modified, the judgment is affirmed.

Perren, J.

We concur: Yegan, Acting P.J.
Coffee, J.

April 28, 2004 (Continued)

DIVISION SIX (Continued)

B166717 People (Not for Publication)
v.
Meadors

The judgment is affirmed.

Coffee, J.

We concur: Gilbert, P.J.
Perren, J.

[illegible]

The judgment is affirmed.

Coffee, J.

We concur: Yegan, Acting P.J.
Perren, J.

DIVISION EIGHT

Court convened at 9:00 A.M.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Emma Jean Amos, Deputy Clerk.

Each of the following:

B165860 People v. Hernandez
B169067 People v. Smith

Argument waived, cause submitted.

DIVISION EIGHT (Continued)

B163783 People
 v.
 Clutts

Merits:

Argued by Danalynn Pritz for appellant and by Michael R. Johnsen, Deputy Attorney General for respondent. Cause submitted.

B162263 Hill
 v.
 City of Santa Monica
 Cowhig

Merits:

Argued by Linda R. Fessler for appellant and by Richard H. Nakamura, Jr. and Carol Ann Rohr, Deputy City Attorney for respondents. Cause submitted.

B165280 People
 v.
 Williams

Merits:

Argued by David M. Thompson for appellant and by Carl N. Henry, Deputy Attorney General for respondent. Cause submitted.

B165546 Vera
 v.
 Integrated Industrial & Family Practice

Merits:

Argued by Lisa Willhelm Cooney for respondent and by and no appearance by counsel for appellant. Cause submitted.

DIVISION EIGHT (Continued)

B168056 Valley Vista Services Inc.
v.
City Of Monterey Park, et al.

Merits:

Argued by Michael B. Montgomery for appellant and by Mark W. Steres and Joshua A. Jessen for respondents. Cause submitted.

B171741 Berg
v.
Darden, DDS.

Merits:

Argued by Arlan A. Cohen for appellant and by Burdick M. Ray for respondent. Cause submitted.

B161859 Kerr
v.
Kerr
Child Support Services Dept.

Merits:

Argued by Linda N. Wisotsky for appellant and by Tammy Y. Nakada for respondent. Cause submitted.

B166242 Turner
v.
Provident Funding Associates, L.P.

Merits:

Argued by B. Daniel Lynch for appellant and by Neil R. O'Hanlon for respondent. Cause submitted.

DIVISION EIGHT (Continued)

B162554 Massad
 v.
 Northridge Hospital Center, et al.

Merits:

Argued by Thomas E. Rubbert for appellant and by David P. Pruett, Kathleen M. Walker, Peter M. Fonda, Suzanne DeRosa, Jesse Blyth and David Winter for respondents. Cause submitted.

B165649 Treystman
 v.
 Henrik Plumbing, Inc.

Merits:

Argued by Julia Sklar for appellant and by Scott Johnson for respondent. Cause submitted.

B166392 People
 v.
 Marez

Merits:

Argued by Nancy J. Mazza for appellant and by Juliet H. Swoboda, Deputy Attorney General for respondent. Cause submitted.

B165538 McLaughlin
 v.
 Walnut Porperties, Inc.

Oral argument continued to May 26, 2004, at 9:00 a.m.

Court adjourned at 11:38 P.M.

DIVISION EIGHT (Continued)

B163733 Cuevas, et al. (Certified for Publication)
v.
Truline Corporation, et al.

The judgment is reversed and the trial court is directed to enter a new and different order denying summary judgment for respondents Truline Corporation and Jose Leonidas Martinez. Appellants to recover their costs on appeal.

Rubin, Acting P.J.

We concur: Boland, J.
Flier, J.

B166704 Wilshire State Bank
v.
St. Paul Mercury Insurance Company

Filed order denying petition for rehearing.